

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHNNY LEE JONES III,

Plaintiff

v.

OFFICER RYBECKI, et al.,

Defendants

Case No.: 2:25-cv-00046-APG-DJA

**Order Affirming Magistrate Judge's Order
and Denying Plaintiff's Motions**

[ECF Nos. 14, 17, 21, 22]

Plaintiff Johnny Lee Jones, III filed an application to proceed *in forma pauperis*. ECF No. 1. Before that application was ruled on, Jones was apparently arrested and is now incarcerated at the Clark County Detention Center. ECF No. 9. Magistrate Judge Albregts denied the IFP application, finding that because Jones “is now incarcerated, he must fill out an application to proceed *in forma pauperis* by an inmate, which is different than the application for non-incarcerated applicants.” ECF No. 11 at 1. Jones appealed that order. ECF No. 5.

“A district judge may reconsider any pretrial matter referred to a magistrate judge in a civil or criminal case under LR IB 1-3, when it has been shown the magistrate judge’s order is clearly erroneous or contrary to law.” Local Rule IB 3-1(a).

In forma pauperis status “is not a constitutional right.” *Rodriguez v. Cook*, 169 F.3d 1176, 1180 (9th Cir. 1999); *see also Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965) (“To proceed in forma pauperis is a privilege not a right.”). The district court may exercise its sound discretion in granting or denying in forma pauperis status. *Smart*, 347 F.2d at 116.

Courts in this district have regularly ruled motions to proceed *in forma pauperis* as moot after the individual’s custodial status changed from inmate to non-inmate following filing their

1 application. *Acuna-Martinez v. Mason*, No. 2:23-cv-01390-ART-MDC, 2025 WL 445690, at *4
2 (D. Nev. Feb. 10, 2025); *Martin v. Daniels*, No. 3:22-cv-00491-ART-CLB, 2023 WL 3505350,
3 at *2 (D. Nev. May 17, 2023); *O'Connor v. Froby*, No. 2:22-cv-00846-JAD-NJK, 2022 WL
4 2656751, at *1 (D. Nev. July 8, 2022). These courts have directed the individual to file the
5 correct version of the *in forma pauperis* application that corresponds to their custodial status.
6 While Jones' circumstances are slightly different in that his custodial status changed from non-
7 inmate to inmate after he filed his application, his change in status still renders his *in forma*
8 *pauperis* by a non-inmate application moot. And while "a denial [of leave to proceed *in forma*
9 *pauperis*] must be based on 'something more' than a prisoner's incarcerated status," Judge
10 Albregts' denial was based on Jones not filing the correct application to proceed *in forma*
11 *pauperis*, rather than on his incarcerated status. *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir.
12 1990). Thus, Judge Albregts properly denied Jones' application and granted him leave to file the
13 correct application to proceed *in forma pauperis* by an inmate. Because the order is not clearly
14 erroneous or contrary to law, I deny Jones' appeal and affirm the order.

15 Judge Albregts also denied Jones' motion to supplement. ECF No. 11 at 1. That decision
16 is not clearly erroneous or contrary to law, so I affirm it.

17 Jones has filed a motion to expedite resolution of this case. ECF No. 17. That motion is
18 premature. The application to proceed *in forma pauperis* must be reviewed; the proposed
19 complaint must be screened; if the complaint survives screening, the defendants must be served
20 with process; and the defendants are entitled to oppose the complaint. Thus, I deny the motion to
21 expedite without prejudice.

1 Jones also moves for an extension of time to comply with Judge Albregts' order. ECF
2 Nos. 21, 22. Judge Albregts previously suspended the deadline to comply with his order. ECF
3 No. 20. Therefore, Jones' motions are moot so I deny them.

4 I THEREFORE ORDER that Jones' appeal **(ECF No. 14) is denied** and Magistrate
5 Judge Albregts' order **(ECF No. 11) is affirmed**.

6 I FURTHER ORDER that Jones' motions to expedite the case **(ECF No. 17)** and to
7 extend the deadline to comply with Judge Albregts' order **(ECF Nos. 21, 22) are denied**.

8 I FURTHER ORDER that Jones has until **April 14, 2025** to file an application to proceed
9 *in forma pauperis* as specified in this order or pay the \$405 filing fee. Jones must attach a
10 complaint containing all of his allegations to his renewed application. Failure to timely comply
11 with this order may result in dismissal of this case without further notice.

12 I FURTHER ORDER the Clerk of Court to send to Jones (1) a copy of this order; and
13 (2) a copy of the application to proceed *in forma pauperis* by an inmate and its instructions.

14 DATED this 13th day of March, 2025.

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18 ANDREW P. GORDON
19 CHIEF UNITED STATES DISTRICT JUDGE
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